

# MASTER POWER PURCHASE AND SALE AGREEMENT

(Version 2.1 – Modified 4/25/00)

## COVER SHEET

This *Master Power Purchase and Sale Agreement* (“*Master Agreement*”) is made as of the following date: May 24, 2001 (“Effective Date”). The *Master Agreement*, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and the Transaction shall be referred to as the “Agreement.” The Parties to this *Master Agreement* are the following:

Name (“Coral Power, L.L.C.” or “Party A”)

Name (“California Department of Water Resources, acting solely under the authority and powers created by AB1-X, codified as Sections 80000 through 80270 of the Water Code, as amended (the “Act”), and not under its powers and responsibilities with respect to the State Water Resources Development System” or “Party B”)

All Notices:

All Notices: California Department of Water Resources

Street: 909 Fannin, Suite 700

Street: 1416 Ninth Street

City: Houston, Texas Zip: 77010

City: Sacramento, California Zip: 95814

Attn: Contract Administration

Attn: Executive Manager Power Systems

Phone: 713-767-5400

Phone: 916-653-5913

Facsimile: 713-767-5414

Facsimile: 916-653-0267

Duns: 937517266

Duns: \_\_\_\_\_

Federal Tax ID Number:

Federal Tax ID Number:

### **Invoices:**

Attn: Power Accounting

Phone: 713-767-5400

Facsimile: 713-767-5414

### **Invoices:**

Attn: Contracts Payable

Phone: 916-653-6404

Facsimile: 916-654-9882

### **Scheduling:**

Attn: 24 Hour Operations

Phone: 1-858-320-1500

Facsimile: 1-858-320-1550

### **Scheduling:**

Attn: Chief Water and Power Dispatcher

Phone: 916-574-2693

Facsimile: 916-574-2569

### **Payments for Energy with cash:**

Attn: Power Accounting

Phone: 713-767-5400

Facsimile: 713-767-5414

### **Payments:**

Attn: Cash Receipts Section

Phone: 916-653-6892

Facsimile: 916-654-9882

### **Payments for Energy with Gas:**

Attn: Gas Scheduling

Phone: 713-767-5366

Facsimile: 832-397-5911

**Wire Transfer:**

BNK:  
ABA: #  
ACCT: #

**Wire Transfer:**

BNK:  
  
ABA: #  
ACCT: #

**Credit and Collections:**

Attn: Director-Risk Management  
Phone: 713-767-5635  
Facsimile: 713-230-7925

**Credit and Collections:**

Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

With additional Notices of an Event of Default to:

Attn: Treasurer  
Phone: 713-767-5400  
Facsimile: 713-230-7925

With additional Notices of an Event of Default to:

Attn: Deputy Controller  
Phone: 916-653-6148  
Facsimile: 916-653-8230

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Party A Tariff Tariff Rate Schedule FERC No. 1 Dated: December 6, 1995 Docket Number ER96-25-000, as amended.

Party B Tariff Tariff N/A Dated \_\_\_\_\_ Docket Number \_\_\_\_\_

**Article Two**

Transaction Terms and Conditions ☐ Optional provision in Section 2.4. If not checked, inapplicable.

**Article Four**

Remedies for Failure to Deliver or Receive ☐ Accelerated Payment of Damages. If not checked, inapplicable.

**Article Five**

Events of Default; Remedies

☐ Cross Default for Party A:

☐ Party A: \_\_\_\_\_ Cross Default Amount \$ \_\_\_\_\_

☐ Other Entity: \_\_\_\_\_ Cross Default Amount \$ \_\_\_\_\_

☐ Cross Default for Party B:

☐ Party B: \_\_\_\_\_ Cross Default Amount \$ \_\_\_\_\_

☐ Other Entity: \_\_\_\_\_ Cross Default Amount \$ \_\_\_\_\_

5.6 Closeout Setoff **[Intentionally Omitted]**

**Article 8**

8.1 Party A Credit Protection:

Credit and Collateral Requirements

(a) Financial Information:

☐ Option A  
☐ Option B Specify: \_\_\_\_\_  
☒ Option C Specify: Annual audited financial statements, annual budget and all financial information sent to any seller under a power purchase agreement; Party B shall use reasonable commercial efforts to periodically prepare and make available to all sellers under power sales agreements, but not more frequently than quarterly, financial information reasonably intended to apprise all such sellers of the financial condition of the Fund.

(b) Credit Assurances:

☒ Not Applicable  
☐ Applicable

(c) Collateral Threshold:

☒ Not Applicable  
☐ Applicable

If applicable, complete the following:

Party B Collateral Threshold: \$ N/A; provided, however, that Party B's Collateral Threshold shall be zero if an Event of Default with respect to Party B has occurred and is continuing.

Party B Independent Amount: \$ N/A

Party B Rounding Amount: \$N/A

(d) Downgrade Event:

☒ Not Applicable  
☐ Applicable

If applicable, complete the following:

☐ It shall be a Downgrade Event for Party B if Party B's Credit Rating falls below \_\_\_\_\_ from S&P or \_\_\_\_\_ from Moody's or if Party B is not rated by either S&P or Moody's

(e) Guarantor for Party B: \_\_\_\_\_

Guarantee Amount: \_\_\_\_\_

8.2 Party B Credit Protection:

(a) Financial Information:

☐ Option A  
☐ Option B Specify: \_\_\_\_\_  
☒ Option C Specify: audited annual financial statements of Guarantor.

(b) Credit Assurances:

☒ Not Applicable  
☐ Applicable

(c) Collateral Threshold:

☒ Not Applicable  
☐ Applicable

If applicable, complete the following:

Party A Collateral Threshold: \$ N/A\_\_\_\_; provided, however, that Party A's Collateral Threshold shall be zero if an Event of Default with respect to Party A has occurred and is continuing.

Party A Independent Amount: \$\_\_\_\_\_

Party A Rounding Amount: \$\_\_\_\_\_

(d) Downgrade Event:

☒ Not Applicable  
☐ Applicable

If applicable, complete the following:

☐ It shall be a Downgrade Event for Party A if Party A's Credit Rating falls below \_\_\_\_\_ from S&P or \_\_\_\_\_ from Moody's or if Party A is not rated by either S&P or Moody's

☐ Other:  
Specify:\_\_\_\_\_

(e) Guarantor for Party A: Coral Energy Holding, L.P.

Guarantee Amount: \$50,000,000

---

**Article 10**

Confidentiality

☒ Confidentiality Applicable  
**(EEI Version 2.1 (modified 4/25/00))**

If not checked, inapplicable.

---

**Schedule M**

☐ Party A is a Governmental Entity or Public Power System  
☒ Party B is a Governmental Entity or Public Power System  
☐ Add Section 3.6. If not checked, inapplicable  
☐ Add Section 8.4. If not checked, inapplicable

Other Changes

**Specify, if any: See Attached Addendum.**

**Addendum**  
**To**  
**EEI Master Power Purchase & Sale Agreement,**  
**Version 2.1 (modified 4/25/00)**  
**Dated May 24, 2001**  
**By and Between**  
**California Department of Water Resources**  
**And**  
**Coral Power, L.L.C.**

This Addendum amends the Agreement as set forth below:

**ARTICLE I. GENERAL DEFINITIONS**

Section 1.5 shall be amended by deleting such section in its entirety and replacing in lieu thereof the following:

“ Buyer means Party B”

Section 1.6 shall be amended by deleting the text in such section and substituting therefor “[Intentionally omitted.]”

Section 1.8 shall be amended by deleting the words “third party” from the first line.

Section 1.9 shall be amended by deleting such section in its entirety and replacing in lieu thereof the following: “[Intentionally omitted]”

Section 1.11 shall be amended by deleting the words “a Terminated Transaction” and substituting therefore “the Transaction”, and shall be supplemented by the following sentence to be added at the end of the first sentence: “The Non-Defaulting Party shall use commercially reasonable efforts to mitigate these Costs.”

Section 1.13 shall be amended by deleting the text in such section and substituting therefor “[Intentionally omitted.]”

Section 1.23 shall be amended by deleting the text in such section and substituting therefore the following:

“Force Majeure” means any cause which the Party claiming Force Majeure (the “Claiming Party”), was unable, in the exercise of due diligence to avoid and which is beyond the reasonable control and is not the result of the negligence of the Claiming Party. Force Majeure includes, but is not restricted to: (a) failure of a specific generating facility to the extent that firm electricity is contracted for from such facility and scheduled pursuant to Section 3.2, and (b) failure of transmission to the extent that firm transmission is contracted for from the transmission facility. An event of Force Majeure with respect to failure of a specific generation facility or transmission facility shall be deemed to exist for only (i) the first full day following the occurrence of such event if generation or transmission services are scheduled for in the day-ahead market or (ii) the first full hour following the occurrence of such event if generation or transmission services are scheduled for in the hour-ahead market. Force Majeure also includes, but is not limited to causes such as flood; earthquake; geohydrolic subsidence; tornado; storm; fire; civil disturbance or disobedience; disruption in transportation system during construction, labor dispute; labor or material shortage (except for such labor and equipment shortages that may occur during the construction of the Generating Facilities); sabotage; action or restraint by court order or public or Governmental Authority (so long as the Claiming Party has not applied for or assisted in the application for, and has opposed where and to the extent reasonable, such government action); and reductions or interruptions in services which, in the reasonable judgment of Claiming Party’s System Resources (as hereinafter defined), are necessary to protect generating or transmission facilities or the reliability of transmission facilities.

Notwithstanding the foregoing, an event of Force Majeure shall also exist if:

- (a) an event occurs which materially limits the ability of electricity generators located within the State of California to produce electricity or deliver electricity to the Delivery Point (a “Major Event”); and
- (b) Party B is not able to obtain electricity from a third party at the Delivery Point due to such Major Event .

Nothing contained herein shall be construed to require a Claiming Party to settle any strike or labor dispute. The term “System Resources” shall mean the electrical systems on which, or the third parties with which Buyer and Seller have arranged, respectively, to make on behalf of Seller or to take on behalf of Buyer delivery of electric energy under this Agreement. Notwithstanding the aforementioned, nothing herein shall be construed as allowing for market price movements to be considered an event of Force Majeure.”

Section 1.24 shall be amended by deleting the text in such section and substituting therefor “[Intentionally omitted.]”

Section 1.28 shall be amended by deleting the text in such section and substituting therefor “[Intentionally omitted.]”

Section 1.33 shall be amended by deleting the text in such section and substituting therefor “[Intentionally omitted.]”

Section 1.34 shall be amended by deleting the text in such section and substituting therefor “[Intentionally omitted.]”

Section 1.35 shall be amended by deleting the text in such section and substituting therefor “[Intentionally omitted.]”

Section 1.36 shall be amended by deleting the text in such section and substituting therefor “[Intentionally omitted.]”

Section 1.37 shall be amended by deleting the text in such section and substituting therefor “[Intentionally omitted.]”

Section 1.38 shall be amended by deleting the text in such section and substituting therefor “[Intentionally omitted.]”

Section 1.39 shall be amended by deleting the text in such section and substituting therefor “[Intentionally omitted.]”

Section 1.40 shall be amended by deleting the text in such section and substituting therefor “[Intentionally omitted.]”

Section 1.41 shall be amended by deleting the text in such section and substituting therefor “[Intentionally omitted.]”

Section 1.42 shall be amended by deleting the text in such section and substituting therefor “[Intentionally omitted.]”

Section 1.44 shall be amended by deleting the text in such section and substituting therefor “[Intentionally omitted.]”

Section 1.46 shall be amended by deleting the text in such section and substituting therefor “[Intentionally omitted.]”

Section 1.47 shall be amended by deleting the following phrase, “listed in Schedule P hereto or as otherwise”.

Section 1.48 shall be amended by deleting the text in such section and substituting therefor “[Intentionally omitted.]”

Section 1.50 shall be amended by deleting the text in such section and substituting therefor “[Intentionally omitted.]”

Section 1.51, “Replacement Price” shall be amended as follows:

- (a) on the second line by deleting the phrase “any Product specified in a” and replacing such phrase with the following: “the Product specified in the”; and

(b) on the fifth line by deleting the phrase “at Buyer’s option” and inserting the following phrase: “absent a purchase.”

Section 1.53, “Sales Price” shall be amended on the fifth line by deleting the phrase “at Seller’s option” and inserting the following phrase: “absent a sale”.

Section 1.54 shall be amended by deleting the phrase “type of” in the third line.

Section 1.55 shall be amended by deleting such section in its entirety and replacing in lieu thereof the following: “Seller means Party A.”

Section 1.56 shall be amended by deleting the text in such section and substituting therefor “[Intentionally omitted.]”

Section 1.57 shall be amended by deleting the text in such section and substituting therefor “[Intentionally omitted.]”

Section 1.58 shall be amended by deleting the text in such section and substituting therefor “[Intentionally omitted.]”

Section 1.59 shall be amended by changing “Section 5.3” to “Section 5.2.”

Section 1.60 shall be amended by deleting such section in its entirety and replacing in lieu thereof the following:

“Transaction means the transaction agreed to by the Parties relating to the sale and purchase of electric energy pursuant to this Agreement”

Section 1.61 is hereby amended by deleting the phrase “a particular” from the second line of such section and replacing in lieu thereof the following:

“the”

Sections 1.62 through 2.00 shall be added to Article I as follows:

1.62 “Actual Availability” has the meaning set forth in Section 4.1(a).

1.63 “Additional Quantities” has the meaning set forth in Section 3.4.

1.64 “Applicable Laws” means all constitutions, laws, ordinances, rules, regulations, interpretations, Permits, treaties, judgments, decrees, injunctions, writs and orders of any Governmental Authority or arbitrator.

1.65 “Base Quantities” has the meaning set forth in Section 3.4.

1.66 “Buyer Performance Event” means (a) an Event of Default by Party A, (b) any event of Force Majeure that prevents the receipt of electric energy hereunder, (c) a suspension of electric energy receipts by Party B which



suspension is permitted under this Agreement or (d) a Change in Law that prevents the receipt of electric energy hereunder.

- 1.67 “California ISO” or “CAISO” means the California Independent System Operator or any successor to the California Independent System Operator.
- 1.68 “Cancellation” has the meaning set forth in Section 3.4.
- 1.69 “Change in Law” means the enactment, repeal and amendment in any Applicable Law or in the interpretation or application of any Applicable Law by any Governmental Authority, in each case occurring after April 1, 2001, regardless of the effective date of such enactment, repeal or amendment.
- 1.70 “Clock Hour Quantities” means each of the quantities referred to in items (f), (g) and (h) of Section 3.4 that are to be delivered during each Clock Hour.
- 1.71 “Clock Hours” means 24 hours per day, seven days per week, including NERC Holidays.
- 1.72 “Fuel Price Rate” has the meaning set forth in Section 3.6.
- 1.73 “Fund” means the Department of Water Resources Electric Power Fund established by Section 80200 of the California Water Code.
- 1.74 “Governmental Authority” means the government of the United States or any state or territory thereof, Party B, a municipality, county, governmental board, public power authority, public utility district, joint action agency, or other political subdivision, public entity, agency or instrumentality of the United States, one or more states or territories of the United States or any combination thereof; provided that for purposes of this defined term in this Agreement, such term shall also include any regional reliability council, independent systems operator, regional transmission authority, power exchange or similar body or utility or other entity with power or control over the transmission or distribution of electric energy or natural gas. For purposes of clarity, a “Governmental Authority” includes “State Governmental Authority” unless otherwise specifically excluded.
- 1.75 “Market Quotation Average Price” shall mean the average of the good faith quotations solicited from not less than three (3) Reference Market-makers; provided, however, that the Party soliciting such quotations shall use commercially reasonable efforts to obtain good faith quotations from at least five (5) Reference Market-makers and, if at least five (5) such quotations are obtained, the Market Quotation Average Price shall be determined disregarding the highest and lowest quotations.

- 1.76 “Market Value” shall have the meaning set forth in Section 5.3.
- 1.77 “NERC Holidays” means additional off-peak days (aka “holidays”) for the Eastern and Western Interconnections as designated by the North American Electric Reliability Council (“NERC”).
- 1.78 “Non-Peak Period” means the months of January, February, March, April, May, June, October, November and December of each calendar year or portion thereof within the Term.
- 1.78.1 “Non-State Change in Law” has the meaning ascribed to such term in Section 10.21(b) herein.
- 1.79 “NP-15” means the north of path 15 zone of the California ISO control area or any successor zone resulting from a breakup or recombination of this zone.
- 1.80 “Operations Event” means any event of Force Majeure or Change in Law which delays the commercial operation date of a Generating Facility.
- 1.81 “Peak Hours” means hour ending 0700 through hour ending 2200 Pacific Prevailing Time Monday through Saturday excluding NERC Holidays.
- 1.82 “Peak Period” means the months of July, August and September of each calendar year or portion thereof within the Term.
- 1.83 “Per Unit Market Price” means the applicable price per MWh determined in accordance with Section 5.3.
- 1.84 “Period” means any Peak Period or any Non-Peak Period.
- 1.85 “Permit” means any license, permit, approval, consent, authorization, registration, notification, waiver, exemption, variance, franchise or order of or from any Governmental Authority.
- 1.86 “Prudent Industry Practices” mean those practices, methods and acts engaged in or approved by a significant portion of the electric power industry during the relevant time period or any of the practices, methods, or acts which in the exercise of reasonable judgment in the light of facts known at the time the decision was made could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety method or act but only requires use of practices, methods or acts generally accepted in the region covered by the Western Systems Coordinating Council.
- 1.87 “Reduced Clock Hour Quantities” has the meaning set forth in Section 3.4.

- 1.88 “Reference Market-maker” means any marketer, trader or seller of or dealer in firm energy products included within the most recent annual list of top 20 power marketers published by Megawatt Daily or a successor publication.
- 1.89 “Replacement Contract” means a contract having a term, quantity, delivery rate, delivery point and product substantially similar to the remaining term, quantity, delivery rate, Delivery Point and Product to be provided under this Agreement; provided however, if Party B is the Defaulting Party, the Replacement Contract shall include electric capacity payments set forth in Section 3.5 herein.
- 1.90 “Scheduled Generation” for any day means the Quantity for such day (including both Base Quantities and any Additional Quantities) determined according to Section 3.4.
- 1.91 “Seller Performance Event” means (a) an Event of Default by Party B, (b) any event of Force Majeure that prevents the delivery of electric energy hereunder, (c) a suspension of electric energy deliveries by Party A which suspension is permitted under this Agreement or (d) a Change in Law that prevents the delivery of electric energy hereunder.
- 1.92 “Shortfall Energy” means for any Period the number of MWh of Scheduled Generation for such Period that are not delivered for reasons other than a Seller Performance Event.
- 1.93 “Shortfall Energy Allowance” means for any Peak Period 3% of the Scheduled Generation for such Peak Period and for any Non-Peak Period 5.7% of the Scheduled Generation for such Non-Peak Period.
- 1.94 “SP-15” means the south of path 15 zone of the California ISO control area or any successor zone resulting from a breakup or recombination of this zone.
- 1.95 “State Governmental Authority” means any of the State of California or any agency thereof, including but not limited to, Party B.
- 1.96 “Intentionally Omitted”
- 1.97 “Term” shall have the meaning set forth in Section 10.1 of this Agreement.
- 1.98 “Trust Estate” means all revenues under any obligation entered into, and rights to receive the same, and moneys on deposit in the Fund and income or revenue derived from the investment thereof.
- 1.99 “2001A Transaction” [Intentionally omitted].

- 2.00 “ZP-26” means the California ISO congestion zone identified as ZP-26 or any successor zone resulting from a breakup or recombination of this zone.

## **ARTICLE II. TRANSACTION TERMS AND CONDITIONS**

Section 2.1 shall be amended by deleting the text in such section and substituting therefore the following:

“2.1 Transaction. The Parties are entering into the Transaction pursuant to the terms and conditions of this Agreement”.

Section 2.2 shall be amended by deleting the text in such section and substituting therefore the following:

“2.2 Governing Terms. Unless otherwise specially agreed, the Transaction between the Parties shall be governed by this Agreement and shall be treated as a stand-alone Transaction. This Agreement (including all exhibits, schedules and any written supplements hereto), any designated collateral, credit support or margin agreement or similar arrangement between the Parties and the Transaction shall form a single integrated agreement between the Parties”.

Section 2.3 shall be amended by deleting the text in such section and substituting therefor “[Intentionally omitted]”.

Section 2.4 shall be amended by deleting the text in such section and substituting therefor “[Intentionally omitted]”.

Section 2.5 shall be amended by deleting the text in such section and substituting therefor “[Intentionally omitted]”.

## **ARTICLE III. OBLIGATIONS AND DELIVERIES**

Section 3.1 shall be amended by:

- (a) deleting the word “each” in the first line and inserting the word “the” in place thereof; and
- (b) deleting the phrase “; provided, however, with respect to Options, the obligations set forth in the preceding sentence shall only arise if the Option Buyer exercises its Option in accordance with its terms”, in the first sentence.

Section 3.2 shall be amended by deleting the following words from the first sentence: “, as specified by the Parties in the Transaction, or in the absence thereof, in accordance with the Transmission Providers,”.

Section 3.2 shall be further supplemented with the addition of the following sentences to be inserted after the last sentence: "The Parties will cooperate on Scheduling matters and will agree to pre-schedule energy to be delivered hereunder in the day-ahead or hour-ahead markets only and according to industry practice in the California ISO control area in effect from time to time. Party A shall schedule electric energy to be delivered hereunder in the day-ahead or hour-ahead markets only. Party A agrees to be designated as the scheduling coordinator or engage the services of a scheduling coordinator on its behalf with CAISO and agrees to pay and be responsible for all costs, fees or charges which may attach thereto, including but not limited to transaction fees, imbalance energy charges, and other CAISO settlement amounts incurred by it or its scheduling coordinator, as appropriate, to deliver to the Delivery Point throughout the term of this Agreement. Party B shall perform or obtain scheduling coordinator services at and after the Delivery Point for all electric energy delivered hereunder. Party B agrees to pay and be responsible for all costs, fees or charges which may attach thereto, including but not limited to transaction fees, imbalance energy charges, and other CAISO settlement amounts incurred by it or its scheduling coordinator, as appropriate, to receive at and after the Delivery Point throughout the term of this Agreement. All generation scheduling and transmission services shall be performed in accordance with all applicable operating policies, criteria, guidelines and tariff of CAISO or its successor, and any other generally accepted operational requirements. In addition, to the extent the following are applicable to Party A, Party A acknowledges and agrees to fulfill contractual, metering and interconnection requirements set forth in the CAISO tariff and the implementing CAISO standards and requirements, including but not limited to executing a CASIO Participating Generator Agreement, so as to be able to deliver electric energy to a Delivery Point in the CAISO controlled grid."

Section 3.3, the last sentence, shall be amended by deleting the words "resume performance of" and substituting the word "make-up" in place thereof .

Article III shall be supplemented with the addition of the following Sections 3.4 through 3.7:

"3.4 Product. Party A may, in its sole discretion, provide the electric energy required to be delivered under this Agreement, in whole or in part, from any source or sources whatsoever. The Quantity of the Product shall be as follows:

(a) From the Effective Date through June 30, 2001, 100 megawatt hours ("MWhs") delivered during each Peak Hour;

(b) From July 1, 2001 through July 31, 2001, 150 MWhs delivered during each Peak Hour;

(c) From August 1, 2001 through August 31, 2001, 250 MWhs delivered during each Peak Hour;

(d) From September 1, 2001 through September 30, 2001, 325 MWs delivered during each Peak Hour;

(e) From October 1, 2001 through June 30, 2002, 200 MWs delivered during each Peak Hour;

(f) From July 1, 2002 through June 30, 2003, 300 MWs delivered during each Peak Hour plus an additional 100 MWs delivered during each Clock Hour;

(g) From July 1, 2003 through June 30, 2010, 400 MWs delivered during each Peak Hour plus an additional 100 MWs delivered during each Clock Hour; and

(h) From July 1, 2010 through June 30, 2012, 100 MWs delivered during each Peak Hour plus an additional 100 MWs delivered during each Clock Hour;

In addition to the quantities set forth in items (a) through (h) above (collectively, the "Base Quantities"), the Quantity of the Product shall include the following quantities (the "Additional Quantities"), each of which is additive to the other:

(x) From July 1, 2003 through June 30, 2012, 175 MWs delivered during each Peak Hour; and

(y) From July 1, 2004 through June 30, 2012, 175 MWs delivered during each Peak Hour.

Party A shall have the right in its sole discretion to cancel either or both of the Additional Quantities and to reduce the Quantity by such amount (the "Cancellation") by giving Party B written notice of cancellation no later than six months before the first delivery date of the applicable Additional Quantity. If Party A or any of its Affiliates is unable to develop or cause to be developed additional generation and such inability results from a Change in Law which materially and adversely affects Party A's obligations with respect to environmental or emissions requirements as compared to such requirements in effect on the Effective Date of this Agreement or Party A's inability to obtain the necessary Permits following diligent efforts to obtain such Permits, then Party A shall have no liability of any kind to Party B arising out of the Cancellation of either or both of the Additional Quantities. In all other cases, Party A shall pay Party B a one time payment of \$5,000,000 for each of the two Additional Quantities, if any, for which Party A effects Cancellation.

During the months of November, December, March, April and May of each year (excluding May 2001), the Parties' purchase and sale obligations with

respect to each component of the Base Quantities and the Additional Quantities shall be reduced to one-half of the amounts stated above.

Commencing on January 1, 2006 and continuing for the remainder of the Term, Party B shall have the right, exercisable by written notice to Party A given no less than 45 days before the beginning of any subsequent calendar quarter during the Term, to reduce the Clock Hour Quantities for such calendar quarter, provided that commencing on January 1, 2006 or thereafter any reduction shall be in increments of 25 MWhs per hour (any Clock Hour Quantities so reduced, the “Reduced Clock Hour Quantities”).

Party A shall have the right, exercisable by written notice to Party B given no less than 60 days before the beginning of any calendar year, to increase or reduce any or all of the Quantities for such calendar year by an amount equal to 10% of the applicable Quantity, provided that Party A may not increase any of the Clock Hour Quantities. In addition, 180 days prior to the end of each calendar year, Party A shall provide a non-binding written estimate of whether it will increase or reduce the Quantities in the following calendar year and such estimate shall be updated 120 days prior to the start of the following calendar year.

For each Generating Facility that does not achieve commercial operations by August 1, 2002, or such date as extended by one day for each day of delay in achieving commercial operations due to the occurrence of an Operations Event (the “Generating Facility COD Termination Date”), Party B shall have the right in its sole discretion, exercisable by written notice given to Party A no later than thirty days after the Generating Facility COD Termination Date, to reduce the Quantity by 43 MWhs per hour for each month from the month in which the Generating Facility COD Termination Date occurs through the end of the Term. If Party B so reduces the Quantity, Party A shall have the right to determine in its sole discretion which component(s) of the Quantity such reduction will be applied against.”

“3.5 Capacity Payments. Commencing in July 2002 through and including December 2005, Party B shall pay to Party A a capacity payment for each Generating Facility that has achieved commercial operations as of the month of payment in the amount of \$358,000 (subject to adjustment as hereinafter set forth if commercial operations has not been reached by October 31, 2001 and June 1, 2002, respectively) for each month in arrears. During all other months, the capacity payment shall be zero regardless of whether any Generating Facility has reached commercial operation. The capacity payment of each Generating Facility that does not achieve commercial operations by (i) October 31, 2001 will be reduced by 6% in each month the capacity payment is payable, and (ii) June 1, 2002 will be reduced by an additional 12% in each month the capacity payment is payable unless such failure to achieve commercial operations is due to an Operations Event. Party B’s obligations to pay capacity

payments shall continue regardless of the identity of the owner of the Generating Facilities. Parties agree that the reduction in capacity payments set forth above is reasonable under the circumstances existing at the time of entering into this Agreement. The Parties further agree that it would be impracticable or extremely difficult to fix the actual damages from a delay in achieving commercial operation of a Generating Facility and hereby agree that the reduction provided above shall be the presumed amount of damages sustained by Party B in the event of such delay. The Parties also agree that notwithstanding anything in this Agreement to the contrary, the payment of amounts described in Section 3.5 shall be Party A's exclusive liability and Party B's exclusive remedy for any failure of the Generating Facilities to reach commercial operations prior to the deadlines set forth herein.

If Party B reduces the Quantity as provided in the last paragraph of Section 3.4, the capacity payment with respect to each Generating Facility which failed to achieve commercial operations prior to Generating Facility COD Termination Date shall be reduced by \$358,000 for each 43 MWhs per hour reduction in the Quantity so effected by Party B.

Upon the occurrence and continuation of a Force Majeure, in the event that Party A is the Claiming Party, Party B shall continue to pay the Contract Price, except that Party B's obligation to pay the Capacity Payment as it relates to the Generating Facility affected by the Force Majeure shall be suspended for the period commencing 60 days after the commencement of the event of Force Majeure being claimed by Party A and continuing until the day the event of Force Majeure no longer exists."

"3.6 Energy Price. Party B shall pay to Party A the electric energy price for each MWh delivered to Party B determined as follows:

(a) For electric energy delivered from the Effective Date of this Agreement through May 31, 2001, \$169/MWh;

(b) For electric energy delivered from June 1, 2001 to October 31, 2001, \$249/MWh;

(c) For electric energy delivered from November 1 through June 30, 2002, \$115/MWh;

(d) For electric energy delivered from July 1, 2002 through December 31, 2003, \$169/MWh;

(e) For electric energy delivered from January 1, 2004 through December 31, 2005, \$72.87/MWh; and

(f) For electric energy delivered from January 1, 2006 through June 30, 2012, the sum of (i) \$25.16/MWh plus (ii) the product of 7.25 MMBtu/MWh times the Fuel Price Rate in effect at the time the electric energy is delivered. In



addition, for any hour in respect of which there are Reduced Clock Hour Quantities, Party B shall pay to Party A \$25.16/MWh for the Reduced Clock Hour Quantities notwithstanding the fact that such Reduced Clock Hour Quantities are not to be delivered.

“Fuel Price Rate” means for any month the Bidweek, California Border—Topock gas price index (expressed in US dollars per MMBtu) as reported in *Natural Gas Intelligence* for such month, provided that for any month for which Party A and Party B agree upon a fixed gas price as the Fuel Price Rate pursuant to this paragraph, the Fuel Price Rate shall be such agreed fixed gas price. Party B may request from Party A fixed gas price quotes for any and all months from January 2006 through June 2012 by making such request in writing at least 60 days before the beginning of the first month covered by the request. Party B may accept Party A’s price quote(s) immediately upon receiving it in which case the accepted quote(s) will be deemed agreed by the Parties. If Party B accepts Party A’s price quote and subsequently becomes a Defaulting Party, in addition to all other amounts which may be due hereunder, Party B shall also pay Party A’s costs associated with unwinding the financial swap obtained to hedge Party A’s fixed price exposure with respect to power sales; provided, however, Party A shall only enter into such financial hedging arrangements or instruments to the extent deemed reasonably necessary or appropriate by Party A taking into account all facts and circumstances existing at the time of entering into such arrangements or instruments. If Party B does not accept Party A’s price quote in accordance with its associated terms, the quote shall automatically be deemed void and Party B shall have no further right to accept it.”

“3.7 Delivery Points. The Delivery Points for the Quantity shall be as follows:

(a) During May 2001 and June 2001, (i) 50 MWh per hour at NP-15 and (ii) 50 MWh per hour at SP-15, NP-15 or ZP-26 as selected by Party A in its sole discretion for each month with written notice of the selection to be given to Party B no less than three Business Days before the beginning of such month;

(b) From July 2001 through December 2001, SP-15;

(c) For the Base Quantities from January 2002 through June 2012, SP-15, NP-15 or ZP-26 as selected by Party A in accordance with the provisions of this subsection; provided, however, a minimum of 25% of the deliveries of the Base Quantities will be delivered at NP-15, at all times. No later than 180 days prior to the commencement of each calendar year, Party A shall deliver to Party B a non-binding preliminary estimate (the “180 Day Preliminary Estimate”) of the congestion zone(s) into which Party A shall schedule delivery of Base Quantities during each month of the following calendar year. No later than 120 days prior to the commencement of each calendar year, Party A shall deliver to Party B a preliminary estimate (the “120 Day Preliminary Estimate”) of the

congestion zone(s) into which Party A shall schedule delivery of Base Quantities during each month of the following calendar year. No later than 60 days prior to the commencement of each calendar year, Party A shall provide a final estimate (the “Final Estimate”) of the congestion zone(s) into which Party A shall schedule Base Quantities during each month of the following calendar year. The Final Estimate may revise one or more Delivery Point(s) from those set forth in the 120 Day Preliminary Estimate by no more than an aggregate of 25% of the total Base Quantities to be scheduled in each month of the following calendar year for all Delivery Points; provided, however, notwithstanding any revisions to the estimates, in no event may Party A deliver less than 25% of Base Quantities in NP-15. In the event Party B desires to receive a different quantity of electric energy in congestion zone(s) other than those set forth on the Final Estimate, Party B may request a price quote from Party A to accommodate this desire. Any delivery to a congestion zone other than that set forth on the Final Estimate due to a request of Party B shall be at the sole cost and expense of Party B; and

(d) For the Additional Quantities, NP-15.”

#### **ARTICLE IV. REMEDIES FOR FAILURE TO DELIVER/RECEIVE**

Section 4.1 shall be deleted in its entirety and replaced with the following Section 4.1:

“4.1 Seller Failure. (a) “Actual Availability” for a Period means (i) the total quantity of electric energy delivered under this Agreement during such Period plus any electric energy not delivered during such Period due to a Seller Performance Event divided by (ii) the total Scheduled Generation during all days within such Period. For the Non-Peak Period of calendar year 2001, the numerator and denominator of the foregoing calculation shall each be increased by an amount equal to the number of MWhs delivered by Party A to Party B between the period of April 1, 2001 through the Effective Date of this Agreement. If any Period ends before its scheduled expiration due to an early termination of this Agreement, the foregoing calculation shall be calculated based upon the Seller’s actual performance during the portion of such Period occurring prior to termination.

(b) If the Actual Availability for any Peak Period is less than 97%, Party A shall pay to Party B the following amounts:

(i) 2% of the capacity payments, if any, paid by Party B to Party A in respect of such Peak Period for each full percentage point by which the Actual Availability is less than 97%, but in no event more than the total of the capacity payments paid by Party B to Party A in respect of such Peak Period; and

(ii) an amount equal to the net positive difference, if any, between the Replacement Price and the Contract Price (including, but not limited to, the amounts set forth in each of Section 3.5 and Section 3.6) for each MWh of

Shortfall Energy in such Peak Period exceeding the Shortfall Energy Allowance for such Peak Period from and after the time that the Shortfall Energy for such Peak Period exceeds the Shortfall Energy Allowance for such Peak Period;

(c) If the Actual Availability for any Non-Peak Period is less than 94.3%, Party A shall pay to Party B the following amounts:

(i) 2% of the capacity payments, if any, paid by Party B to Party A in respect of such Non-Peak Period for each full percentage point by which the Actual Availability is less than 94.3%, but in no event more than the total of the capacity payments paid by Party B to Party A in respect of such Non-Peak Period; and

(ii) an amount equal to the net positive difference, if any, between the Replacement Price and the Contract Price (including, but not limited to, the amounts set forth in each of Section 3.5 and Section 3.6) for each MWh of Shortfall Energy in such Non-Peak Period exceeding the Shortfall Energy Allowance for such Non-Peak Period from and after the time that the Shortfall Energy for such Non-Peak Period exceeds the Shortfall Energy Allowance for such Non-Peak Period;

(d) From and after the time that Party A provides to Party B the day-ahead schedule tags for electric energy to be delivered under this Agreement, Party A shall not curtail deliveries of the scheduled electric energy and re-direct such electric energy to any other entity for economic reasons.

(e) Notwithstanding anything in this Agreement to the contrary, the payment of the amounts described in Sections 4.1(b) and 4.1(c) shall be Party A's exclusive liability and Party B's exclusive remedy for any failure of Party A to provide capacity or electric energy to Party B or for any failure for any reason to deliver electric energy required to be delivered by this Agreement"

Section 4.2 shall be deleted in its entirety and replaced with the following Section 4.2:

"4.2 Buyer Failure. If Buyer fails to take any Scheduled Generation other than as a result of a Buyer Performance Event, then Buyer shall pay Seller, on the date payment would otherwise be due in respect of the month in which the failure occurred (a) an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price (including an amount reflecting both the capacity payments and the electric energy payments), and (b) an amount that will compensate Seller for (i) any electric energy or fuel imbalance charges or similar costs assessed against or incurred by Seller as a result of such failure, and (ii) any losses resulting from resales of fuel not consumed as a result of such failure, including Seller's liquidation of any financial or physical hedge positions entered into in support of the Transaction; provided, however, Party A shall only enter into such hedging

arrangements or instruments to the extent deemed reasonably necessary or appropriate by Party A taking into account all facts and circumstances existing at the time of entering into such arrangements or instruments. The invoice for such amounts shall include a written statement explaining in reasonable detail the calculation of such amounts. The provisions of Section 7.1 will not preclude Seller's recovery of amounts described in this Section 4.2."

## **ARTICLE V. EVENTS OF DEFAULT; REMEDIES**

Section 5.1(b) shall be amended by deleting the words "or when deemed made or repeated" and substituting the words "and such breach has a material adverse effect upon the Party to whom such representation or warranty was made".

Section 5.1(c) shall be amended by deleting the words "if such failure is not remedied within three (3) Business Days after written notice" and substituting the words "and such failure is not excused by Force Majeure, or such failure is not remedied within five (5) Business Days after receipt of written notice thereof".

Section 5.1(e) shall be amended by deleting the words "creditworthiness/collateral requirements agreed to pursuant to Article Eight hereof" and substituting the words "creditworthiness requirements agreed to pursuant to Article Eight hereof, if such failure is not remedied within thirty (30) days after receipt of written notice thereof".

Section 5.1(g) shall be deleted in its entirety and replaced with the following:

[Intentionally Omitted]

Section 5.1(h)(i) shall be amended by deleting the words "or when deemed made or repeated" and substituting the words "and such breach has a material adverse effect upon the Party to whom such representation or warranty was made".

Section 5.1(h)(ii) shall be amended by deleting the words "three (3) Business Days after written notice" and substituting the words "five (5) Business Days after receipt of written notice thereof" in place thereof.

Section 5.1(h)(iv) shall be amended by deleting the word "each" in such section and substituting in lieu thereof the following:

"the"

Section 5.1(h)(v) shall be amended by deleting the words "any guaranty" and substituting the words "Guarantor's guaranty related to this Agreement".

Section 5.1(i) shall be added to Section 5.1 as follows:

"(i) (A) With respect to Party B, any of the following: (i) a Change in Law occurs that causes this Agreement or any material portion thereof to be illegal or

unenforceable against Party B; or (ii) Party A incurs costs (the “Change in Law Costs”) as a result of a Change in Law that imposes special governmental charges, taxes, fees, assessments, impositions, surcharges, duties, levies, price caps or limitations, excise taxes or any form of windfall profits tax which have a material effect on Party A under this Agreement and that are not of general applicability but are instead specifically directed at the generation, sale, purchase, ownership and/or transmission of electric power, natural gas and/or other utility or energy goods and services; or (iii) the accomplishment of (i) or (ii) by means of a legal action by the State of California against any Governmental Authority; unless Party B delivers to Party A the written notice described in 5.1(i)(C) below. For purposes of this clauses (i) and (ii), a “Change in Law” shall include only a law enacted, repealed or amended, or regulations, orders or similar actions promulgated or issued, by a State Governmental Authority after April 1, 2001.

(B) With respect to Party A, any Change in Law (as defined in (A)) that reduces or grants a credit (a “Change in Law Reduction”) with respect to the taxes or impositions referred to in (A) imposed after the Effective Date of this Agreement which Party B has previously agreed to pay pursuant to (C) below, unless Party A delivers to Party B the written notice described within 5.1(i)(C) below.

(C) In the event either Party desires to claim an Event of Default pursuant to 5.1(i)(A) or 5.1(i)(B), as applicable, such Party (the “Notifying Party”) shall deliver written notice of this intention to the other Party (the “Receiving Party”). The Parties acknowledge and agree that in the event the Receiving Party delivers written notice, no later than ten (10) Business Days after its receipt of the Notifying Party’s notice, indicating that the Receiving Party desires to pay either the Change in Law Costs or grant a reduction or credit to the Contract Price in the amount of the Change in Law Reduction, as applicable, no Event of Default shall occur, unless and until the Receiving Party fails to pay such amounts and such failure is not cured as provided for in Section 5.1(a) hereof. If a Party elects to pay Change in Law Costs or grant a reduction or credit to the Contract Price in the amount of the Change in Law Reduction, such amounts shall be added to or deducted from the Contract Price otherwise due as set forth in the monthly invoice delivered pursuant to Article Six.”

Section 5.1(j) shall be added to Section 5.1 as follows:

“(j) With respect to Party A, the issuer rating of the Guarantor for Party A is reduced to BBB- or lower by S&P and Baa3 or lower by Moody’s and Party A has not within 45 days after such reduction provided a replacement guaranty executed by a substitute guarantor having an issuer or other rating above BBB- by S&P or Baa3 by Moody’s on substantially the same terms and conditions as the guarantee executed of even date herewith.”

Section 5.2, the last sentence, shall be replaced in its entirety by the following: “In addition to all other amounts due or becoming due by the Defaulting Party to the Non-

Defaulting Party, the Defaulting Party shall pay the Non-Defaulting Party a payment upon termination of this Agreement as the result of an Event of Default (the "Termination Payment") which shall be the aggregate of the Market Value and Costs calculated in accordance with Section 5.3 which shall be paid no later than one hundred eighty (180) days after receipt of written notice of an Early Termination Date."

Section 5.2 (as amended by the clause immediately above) shall be supplemented with the addition of the following sentence to be inserted after the last sentence: "Notwithstanding the other provisions of this Agreement, if the Non-Defaulting Party has the right to liquidate or terminate all obligations arising under this Agreement under the provisions of this Article V because the Defaulting Party either (a) is the subject of a bankruptcy, insolvency or similar proceeding, or (b) applies for, seeks, consents to, or acquiesces in the appointment of a receiver, custodian, trustee, liquidator, or similar official for all or a substantial portion of its assets, then this Agreement and the Transaction shall automatically terminate, without notice, as if the Early Termination Date was the day immediately preceding the events listed in Section 5.1."

Section 5.3 of the Agreement is hereby deleted in its entirety and replaced with the following:

"5.3 Termination Payment Calculations

- (a) The Termination Payment shall be an amount equal to the sum of: (i) the Market Value and (ii) the Costs. The term "Market Value" shall mean: (a) in the case Party B is the Non-Defaulting Party, the present value of the positive differences, if any of (1) payments under a Replacement Contract based on the Per Unit Market Price and (2) payments under this Agreement; and (b) in the case Party A is the Non-Defaulting Party, the present value of the positive differences, if any of (1) payments under this Agreement and (2) payments under a Replacement Contract based on the Per Unit Market Price, in each case using the Present Value Rate (as hereinafter defined) as of the time of termination (to take account of the period between the time notice of termination was effective and when such amount would have otherwise been due pursuant to the relevant Transaction). For purposes hereof, the term "Present Value Rate" shall mean the sum of: (i) 0.50% and (ii) the yield reported on page "USD" of the Bloomberg Financial Markets Services Screen (or, if not available, any other nationally recognized trading screen reporting on-line intraday trading in United States government securities) at 11:00 a.m. (New York City, New York time) for the United States government securities having a maturity that matches the average remaining term of this Agreement. It is expressly agreed that the Non-Defaulting Party shall not be required to enter into a Replacement Contract in order to determine the Termination Payment.
- (b) To ascertain the Per Unit Market Price of a Replacement Contract with a term of less than one year, the Non-Defaulting Party may consider, among other valuations, quotations from leading dealers in electrical energy contracts, the

settlement prices on established, actively traded power exchanges, and other bona fide third party offers.

- (c) To ascertain the Per Unit Market Price of a Replacement Contract with a term of one year or more, the Non-Defaulting Party shall use the Market Quotation Average Price; provided, however, that if there is an actively traded market for such Replacement Contract or if the Non-Defaulting Party is unable to obtain reliable quotations from at least three (3) Reference Market-makers, the Non-Defaulting Party shall use the methodology set forth in Section 5.3(b).
- (d) In no event, however, shall a Party's Market Value or Costs include any penalties, ratcheted demand charges or similar charges imposed by the Non-Defaulting Party. Furthermore, if the calculation of the Termination Payment does not result in damages owing to the Non-Defaulting Party, the Termination Payment shall be zero (0).
- (e) If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within ten (10) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Any Termination Payment due hereunder shall be paid no later than 180 days after the Early Termination Date.

Section 5.4 shall be deleted in its entirety and replaced with the following:

“[Intentionally Omitted]” .

Section 5.5 shall be deleted in its entirety and replaced with the following Section 5.5:

“[Intentionally Omitted]”

Section 5.6 shall be amended by deleting the text in such section and substituting therefor

“[Intentionally omitted.]”

Section 5.7 shall be amended by deleting the text in such section and substituting therefor

“5.7 Suspension of Performance. Notwithstanding any other provision of this Master Agreement, if an Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right to suspend performance under this Agreement; provided, however, any such suspension may not continue for longer than (i) 180 days with respect to an Event of Default pursuant to Section 5.1(a) herein and (ii) ninety (90) days with respect to all Events of Default other than pursuant to Section 5.1(a) unless an Early Termination Date shall

have been declared and written notice thereof given by the Non-Defaulting Party pursuant to Section 5.2.”

## **ARTICLE VI. PAYMENT AND NETTING**

Section 6.1, the first sentence, shall be amended by deleting the words “and, if ‘Accelerated Payment of Damages’ is specified by the Parties in the Cover Sheet, payments pursuant to Section 4.1 or 4.2 and Option premium payments pursuant to Section 6.7” from the sentence.

Section 6.1, the last sentence, shall be amended by deleting it in its entirety and replacing it with the following sentences: “By the first day of each month, Party A will render to Party B an invoice for the payment obligations hereunder for such month, based on the assumption that the full amount of the Scheduled Generation will be delivered in such month and making good faith estimates of any other items not known at the time the invoice is prepared. If the actual delivered energy in any month is different than the Scheduled Generation for such month, or if any other actual information is different than the estimates on an invoice, the corrected amounts will be included on the next invoice issued after the actual information becomes known to Party A, and any appropriate charges and credits will be included on such invoice.”

Section 6.2 shall be amended by inserting the following at the end of such section:

“The Parties acknowledge and agree that all Termination Payments shall accrue interest at the Interest Rate from the date the Non-Defaulting Party delivers its calculation of the Termination Payment until such Termination Payment is made.”

Section 6.4, the first sentence, shall be amended by:

- (a) deleting the words “on the same date pursuant to all Transactions” and replacing in lieu thereof the following: “during the same month pursuant to the Transaction”; and
- (b) deleting the word “Products” and replacing in lieu thereof the following: “the Product” .

Section 6.7 shall be amended by deleting the text in such section and substituting therefore “[Intentionally omitted]”.

Section 6.8 shall be amended by deleting the text in such section and substituting therefore “[Intentionally omitted]”.

## **ARTICLE VII. LIMITATIONS**



Section 7.1, the fifth sentence, is hereby amended by deleting the words “UNLESS EXPRESSLY HEREIN PROVIDED” and substituting the words “EXCEPT FOR TRANSMISSION COSTS SPECIFICALLY PROVIDED HEREIN” in place thereof.

Section 7.1, the last sentence, is hereby supplemented with the following words “AND ARE NOT PENALTIES AND APPLY REGARDLESS OF DAMAGES ACTUALLY SUSTAINED” to be added at the end of the sentence.

## **ARTICLE VIII. CREDIT AND COLLATERAL REQUIREMENTS**

Section 8.1(b) shall be amended by deleting the text in such section and substituting therefore “[Intentionally omitted.]”

Section 8.1(c) shall be amended by deleting the text in such section and substituting therefore “[Intentionally omitted.]”

Section 8.1(d) “Intentionally Omitted”.

Section 8.1(e) shall be amended by deleting the text in such section and substituting therefore “[Intentionally omitted.]”

Section 8.2(b) shall be amended by deleting the text in such section and substituting therefore “[Intentionally omitted.]”

Section 8.2(c) shall be amended by deleting the text in such section and substituting therefore “[Intentionally omitted.]”

Section 8.2(d) shall be amended by deleting the text in such section and substituting therefore “[Intentionally omitted.]”

Section 8.3 shall be amended by deleting the text in such section and substituting therefore “[Intentionally omitted.]”

## **ARTICLE IX GOVERNMENTAL CHARGES**

Section 9.2 shall be amended by deleting the word “a” in the first sentence and in the fourth line.

## **ARTICLE X. MISCELLANEOUS**

Section 10.1 shall be deleted in its entirety and replaced with the following:

“10.1 Term of Agreement. Unless earlier terminated pursuant to the terms and conditions of this Agreement, the term of this Agreement (the “Term”) shall commence on the Effective Date and end at 11:59 p.m. (California Time) on June 30, 2012; provided, however, that such termination shall not affect or

excuse the performance of either Party under any provision of this Agreement that by its terms survives any such termination.”

Section 10.2 shall be deleted in its entirety and replaced with the following:

“10.2 Representations and Warranties. On the Effective Date, (a) each Party represents and warrants to the other Party that:

- (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (ii) it has all material regulatory authorizations necessary for it to legally perform its obligations under this Agreement;
- (iii) the execution, delivery and performance of this Agreement and the Transaction contemplated herein are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it except to the extent such violation will not have a material adverse effect on such Party’s ability to perform its obligations hereunder;
- (iv) this Agreement, the Transaction, and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses;
- (v) it is not Bankrupt and there are no proceedings pending, or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
- (vi) there are not pending legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;
- (vii) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;
- (viii) Intentionally Omitted;
- (ix) Intentionally Omitted;
- (x) Intentionally Omitted;
- (xi) Intentionally Omitted; and

(xii) Intentionally Omitted

and (b) Party B represents and warrants to Party A that (i) payments under this Agreement shall constitute an operating expense of the Fund payable prior to all bonds, notes or other indebtedness secured by a pledge or assignment of the Trust Estate or payments to the general fund, (ii) Party B has complied with the covenants set forth in Section 3.10 of Schedule M attached hereto and any failure to perform the covenants set forth in Sections 3.9, 3.9.1 or 3.10 of Schedule M would constitute an Event of Default under Section 5.1(c) herein, (iii) the statements set forth in Section 3.12 of Schedule M attached hereto concerning determinations made by Party B is true and correct and (iv) Party B acknowledges and agrees that payments due from Party B to Party A hereunder are just and reasonable.

Section 10.4, the first and second sentences, shall be amended by inserting the following words, "To the extent permitted by law," at the beginning of each sentence.

Section 10.4 shall be amended by inserting the following at the end of such section:

"Any restrictions of Applicable Law which limit a Party's ability to indemnify the other Party shall equally apply to each Party."

Section 10.5, shall be deleted in its entirety and replaced with the following Section 10.5:

"10.5 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, (A) Party A may without the consent of Party B (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof (including, but not limited to the right to receive the capacity payments set forth in Section 3.5 herein) in connection with any financing or other financial arrangements, regarding Party A or the owner of the Generating Facilities, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate's credit worthiness is equal to or higher than that of such Party or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such Party whose credit worthiness is equal to or higher than that of such Party; or (iv) collaterally assign its rights hereunder as security for Party A's obligations to the owner of the Generating Facilities and (B) Party B may without the consent of Party A (i) collaterally assign or pledge this Agreement to its bond trustee, (ii) sell, transfer or assign to a California power authority or similar entity in connection with a transfer of Party B's rights and obligations with respect to the Bonds (as defined in Section 10.21 herein), the Fund and all power purchase agreements entered into by Party B pursuant to the Act, provided that such power authority (W) has the same regulatory authorization as Party B

as of the execution date of this Agreement to establish and recover its revenue requirements, and (X) is rated at least the higher of (1) BBB- or better by S&P or Baa3 or better by Moody's, or (2) Party B's rating as of the date of the proposed assignment of this Agreement, and (Y) can and does confirm the covenants and representations of Party B set forth herein and (Z) provides to Party A a legal opinion in form and substance reasonably acceptable to Party A addressing similar issues to those covered by the legal opinion delivered to Party A under Article XI."

Section 10.6 shall be deleted in its entirety and replaced with the following:

"10.6 Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW."

Section 10.8, the fourth sentence, shall be amended by deleting the words "Except to the extent herein provided for, no" and substituting the word "No" in place thereof.

Section 10.8, the ninth sentence, shall be amended by inserting the words "or unenforceable" after the words "rendered unlawful".

Section 10.8, second to the last sentence, shall be deleted in its entirety and replaced with the following sentence:

"The audit provisions set forth in Section 10.9 shall survive the termination of the Agreement for a period of twelve (12) months."

Section 10.10 shall be deleted in its entirety and replaced with the following:

"10.10 Forward Contract. The Parties acknowledge and agree that the Transaction constitutes a 'forward contract' within the meaning of the United States Bankruptcy Code."

Section 10.11 shall be amended by inserting the following at the end of the first sentence of such section:

"provided, further, that either Party may publicly disclose the type and quantity of Product(s) and the duration of this Agreement"

Article X shall be supplemented with the addition of the following Sections 10.12 through 10.21:

"10.12 No Retail Services; No Agency. Nothing contained in this Agreement shall grant any rights to or obligate Party A to provide any services hereunder

directly to, or for, retail customers of any person. In performing their respective obligations hereunder, neither Party is acting, or is authorized to act, as agent of the other Party.”

“10.13 [Intentionally Omitted]”

“10.14 Generating Facilities. An affiliate of Party A is currently developing five (5) General Electric LM6000 natural gas-fired generating facilities (each such facility is hereinafter a “Generating Facility”) each with a nominal generating capacity of 43MW. It is contemplated that three (3) of the Generating Facilities will be installed at the Indigo Energy Facility located at the Northern terminus of 19 Avenue, City of Palm Springs, Riverside County, California 92258; Riverside Assessor Parcel Number 666-320-014 (the “Indigo Site”). Two (2) of the Generating Facilities are contemplated to be installed at the Larkspur Energy Facility located at the intersection of Harvest Road and Otay Mesa Road, City of San Diego, California 92173; San Diego County Assessor Parcel Number 646-130-48 (the “Larkspur Site”). Each of the Generating Facilities is to consist of a LM 6000 Enhanced Sprint gas turbine to be outfitted with selective catalytic reduction units and CO catalysts for stack emissions control which are designed to limit NOx emissions to 5 parts per million and 35 tons per year consistent with the air permits requested for each Generating Facility. The major milestones (the “Major Milestones”) identified for the development of the Generating Facilities and the current anticipated completion date for each Major Milestone is as follows:

Major Milestone Activity	Current Anticipated Completion Date	
	<u>Larkspur Site</u>	<u>Indigo Site</u>
Acquisition of land use permit	4/4/2001	4/4/2001
Acquisition of air permit	4/27/2001	4/27/2001
Approval of gas interconnection	1/31/2001	2/5/2001
Approval of electrical interconnection	3/28/2001	3/28/2001
Delivery of all required equipment	6/1/2001	6/1/2001
Start of construction	4/7/2001	4/7/2001
Completion of gas interconnection	6/4/2001	6/4/2001
Completion of electric interconnection	6/4/2001	6/4/2001
Facility ready for test	6/15/2001	6/15/2001

Commercial Operation Date

7/1/2001

7/1/2001”

“10.15 Emissions. Party A shall use commercially reasonable efforts to cause the owner of the Generating Facilities to obtain permits and any emissions offsets in order to install and operate each Generating Facility for at least 3,000 hours per year through December 31, 2005 at nominal generating capacity.”

“10.16 Reports. Party A shall deliver monthly progress reports to Party B describing the progress made during the prior month towards completion of the Major Milestones. If one or more Generating Facilities has not achieved commercial operations prior to July 1, 2001, Party A shall supply weekly progress reports with respect to such Generating Facilities.”

“10.17 No Challenge; Defense of Agreement. Neither Party will exercise any of its respective rights under Section 205 or Section 206 of the Federal Power Act to challenge or seek to modify any of the rates or other terms and conditions of this Agreement.”

“10.18 Dispatch of Generating Facilities.

(a) Dispatch Option. During each of calendar year 2002, 2003, 2004 and 2005, Party B shall have the option (the “Dispatch Option”) to request that Party A cause each of the Generating Facilities to be operated for up to 500 hours. In the event Party B does not elect to dispatch the Generating Facilities at least 500 hours during such period (whether due to Allowed Outage Hours (as hereinafter defined) or otherwise), any such shortfall shall not be carried over to the next calendar year. Party B may not exercise the Dispatch Option with respect to any Generating Facility unless and until such Generating Facility has reached commercial operations date; provided, however, that in the event Party B elects to reduce Base Quantities due to the failure of one or more Generating Facilities to reach commercial operations prior to August 1, 2002, Party B shall forfeit its Dispatch Option with respect to such Generating Facility. Electric energy generated by a Generation Facility in response to a Dispatch Notice (as hereinafter defined) may be (X) used by Party A to satisfy its obligations to sell electric energy to Party B pursuant to Section 3.4 herein, (Y) used by Party A to consummate a sale into the secondary trading market; provided, however, if Party A elects to sell such electric energy into the secondary trading market, Party A shall sell such electric energy to a delivery point located within any of NP-15, SP-15 or ZP-26, or (Z) , in the case of Uneconomic Power (as hereinafter defined), sold to Party B as a sale of electric energy in addition to Party A’s obligations to sell electric energy to Party B pursuant to Section 3.4 herein.

(b) Dispatch Notices. Party B shall provide written notice (“Dispatch Notice”) of its election to exercise the Dispatch Option on a day-ahead prescheduled basis with a minimum of two (2) hours notice prior to the

applicable day-ahead scheduling deadlines in effect at such time. The minimum run time of each Generating Facility shall be ten (10) hours.

(c) Dispatch Option Adjustment.

(i) For each hour which Party B elects to dispatch a Generation Facility and (A) the output of the applicable Generating Facility is previously committed to third parties (including, but not limited to, serving the California ISO's ancillary service market), or (B) the Generation Facility is run during the time set forth in the Dispatch Notice, or (C) the Generating Facility cannot be operated due to emission restraints, Party A shall satisfy its obligation to dispatch the Generation Facility (each such hour, a "Running Hour").

(ii) For each hour which Party B elects to dispatch a Generation Facility and the Generation Facility is unavailable due to maintenance, forced outage, failure to start or is otherwise unavailable due to an event of Force Majeure (each hour, an "Allowed Outage Hour"), Party A shall not receive credit for such hour towards satisfying the Dispatch Option in the current calendar year, but Party B may not carry over any such hours to the next calendar year.

(iii) In the event the total of the Running Hours and Allowed Outage Hours for each Generating Facility is less than the total hours Party B elects to dispatch such Generating Facility in a calendar year, such deficiency shall be added to the number of hours Party B would otherwise be allowed to dispatch such Generating Facility in the next calendar year.

(d) Uneconomic Power Dispatch. In the event Party B elects to dispatch a Generating Facility and Party A determines that electricity to be generated by such Generating Facility would be Uneconomic Power (as hereinafter defined), Party B shall either (Y) reimburse Party A for the difference (the "Dispatch Shortfall") between the Power Generation Costs (as hereinafter defined) and the Market Price (as hereinafter defined) or (Z) purchase the Uneconomic Power (such purchase shall be in addition to Party B's obligations to purchase electricity hereunder) at the Power Generation Costs. Market Price means the amount of revenue Party A reasonably estimates it would receive from a market sale of the Uneconomic Power, including, but not limited to the cost to transmit the Uneconomic Power from the Generating Facility to a Delivery Point the Quantity is required to be delivered to hereunder. Uneconomic Power means any electricity generated by a Generating Facility in response to a Dispatch Notice for which Party A determines the Market Price will be less than the Power Generation Costs. Power Generation Costs shall include the cost of generating the Uneconomic Power (including, but not limited to natural gas (including, but not limited to all commodity, transportations, fees and surcharges) required to generate the Uneconomic Power as well as all variable operating costs (operations and maintenance, emissions, etc.)) associated with generating the Uneconomic Power. Payments of Dispatch Shortfall or the Power Generation Costs shall be made in the month following the month such amounts

were incurred and shall be paid on the same date as set forth in the applicable section of Article VI – Payment and Netting.”

10.19 Maintenance. Party B acknowledges and Party A agrees that upon each Generating Facility reaching commercial operations through December 31, 2005, Party A shall use commercially reasonable efforts to cause to be performed all maintenance, including any major maintenance overhaul, of each Generating Facility which has achieved commercial operations in compliance with Prudent Industry Practices and the manufacturers' maintenance requirements for such Generating Facility. The Parties acknowledge and agree that so long as Party A complies with the Dispatch Option requirements in Section 10.18 herein, Party A shall be deemed in compliance with the requirements of this Section 10.19 with respect to dispatching of a Generating Facility.

10.20 Party A Bond Issuance Termination Right. Party A shall have the right, but not the obligation, to terminate this Agreement in accordance with the provisions of this Section 10.20 without liability of either Party for a Termination Payment. Party A shall have the right to terminate this Agreement if, prior to October 31, 2001, Party B has neither (a) issued and closed the sale of the bonds (the “Bonds”) rated at least BBB- or better by S&P or Baa3 or better by Moody’s, nor (b) obtained a rating of BBB- or better by S&P or Baa3 or better by Moody’s based on the ability of the Fund to pay its obligations. Party A may exercise this right to terminate this Agreement by delivering written notice of such intention to Party B no later than November 30, 2001 and such termination shall be effective immediately upon giving such notice; provided, however, if Party B does not satisfy the obligations set forth in (a) or (b) above and Party A exercises its right to terminate this Agreement in accordance with this Section 10.20, Party A’s obligation to deliver electric energy hereunder shall terminate on October 31, 2001.

10.21 Party A Termination Rights Without Termination Payment. Party A shall have the right, but not the obligation, to terminate this Agreement in accordance with the provisions of this Section 10.21 without recourse against or further obligations by either Party except for amounts due or becoming due by one Party to the other Party. Party A shall have the right to terminate this Agreement if during the Term of this Agreement:

(a) Party B fails to maintain at least one rating on the either the Fund or the Bonds of BBB- or better by S&P or Baa3 or better by Moody’s; or

(b) a Non-State Change in Law (i) causes this Agreement or any material portion thereof to be illegal or unenforceable against Party B, or (ii) imposes special governmental charges, taxes, fees, assessments, impositions, surcharges, duties, levies, price caps or limitations, excise taxes or any form of windfall profits tax which have a material effect on Party A under this Agreement that are not of general applicability but are instead specifically



directed at the generation, sale, purchase, ownership and/or transmission of electric power, natural gas and/or other utility or energy goods and services. For purposes of this clause (b), a “Non-State Change in Law” shall include only such Applicable Laws enacted, repealed or amended by a Governmental Authority other than a State Governmental Authority after April 1, 2001.”

#### ARTICLE XI. CONDITIONS PRECEDENT

The Agreement is hereby supplemented with the following Article XI:

##### **“ARTICLE XI. CONDITIONS PRECEDENT**

This Agreement shall not be effective unless and until the occurrence of the following item, or written waiver thereof of any such item by Party A:

- (a) The California ISO’s execution and delivery of a form of Suspension, Termination and Release Agreement acceptable to Party A relating to the release of five Summer Reliability Agreements between Party A and California ISO.
- (b) Party A’s receipt of a legal opinion from General Counsel for Party B in form and substance reasonably acceptable to Party A and Party B.”

#### ARTICLE XII. GAS PAYMENTS

The Agreement shall be supplemented by adding the following Article XII:

##### **“ARTICLE XII. GAS PAYMENTS**

12.1 Gas Payment Election. On and after January 1, 2006, in the event (a) Party A and Party B have not otherwise agreed on a fixed price for the variable electric energy price component of the cost of the Product, and (b) Party B has not otherwise elected to have such variable electric energy price component fixed on a monthly index, Party B, at its sole option, may elect to make payments for the variable component of the price for the Product in the form of natural gas, pursuant to the provisions of this Article XII. In the event Party B elects to pay for the variable component of the price for the Product in kind with natural gas (“Gas”), Party B shall: (a) deliver written notice to Party A no later than the date which is sixty (60) days prior to the first day Gas is to flow; and (b) cause to be delivered to Party A a quantity of natural gas (the “Gas Payment”) calculated in accordance with the provisions of Section 12.2.

12.2 Calculation of Gas Payment. The quantity of Gas required for the Gas Payment shall be an amount equal to 7.25 multiplied by the number of megawatt hours Party B elects to pay for with a Gas Payment.

12.3 Gas Delivery Point. The Gas Payment shall be delivered by Party B to Party A at the California Border-Topock or such other receipt points as may be available into Southern California Gas Company ("SoCalGas"), after any receipt point allocations, limitations or constraints (the "Gas Delivery Point"). The Parties may from time to time determine if alternate Gas Delivery Points exist that are mutually agreeable and economically equivalent to deliveries into SoCalGas. The gas quantities delivered shall be for the volumes scheduled and confirmed into SoCalGas. The Parties agree to accept the SoCalGas measurement, accounting and reconciliation for the purposes of determining the Gas Payment quantities delivered

12.4 Scheduling of Gas Payment. Scheduling requests to Party A will be accepted at the telephone number provided by Party B to Party A set forth in the Cover Sheet of this Agreement. Party B shall obtain and pay for transportation to the Gas Delivery Point. Party B represents that all Gas delivered in connection with all Gas Payment shall meet the specifications of Party A's transporter as identified by Party A. Unless otherwise agreed, nothing herein shall require or permit either Party to schedule Gas at a point other than the Gas Delivery Point. If Party B fails to deliver the Gas Payment or if Party A fails to accept the Gas Payment, then such occurrence shall constitute a "Gas Payment Default" and the "Gas Payment Default Quantity" shall be the numerical difference between the Gas Payment and the amount of Gas either delivered by Party B or accepted by Party A, as appropriate. Upon the occurrence of a Gas Payment Default, the defaulting party shall pay to the other party an amount equal to the sum of the Gas Payment Default Quantity multiplied by the Gas Payment Replacement Price Differential. The "Gas Payment Replacement Price Differential" means (i) in the event of Party B's default, the positive difference obtained by (x) subtracting the quantity of the Gas Payment actually delivered by Party B to the Gas Delivery Point from the quantity of Gas Payment scheduled, and (y) multiplying such difference by the daily market value of Gas at the Gas Delivery Point on the date of default, plus all incremental transportation costs and other basis adjustments incurred by Party A to replace the Gas Payment Default Quantity (but excluding penalties or charges for unauthorized receipts of Gas by Party A) and (ii) in the event of Party A's Gas Payment Default, the positive difference obtained by subtracting (a) the price obtained by Party B in an arms-length sale(s) to a third party of a quantity equal to the Gas Payment Default Quantity less incremental transportation charges to Party B, and including other basis adjustment from (b) the value of the Gas Payment B).

12.5 Correction of Imbalances, Cash outs and Penalties. In the event of (i) an imbalance on Party A's transporter's system caused by Party B or Party B's transporter's delivery of less or more than the scheduled Gas Payment quantity (in which case Party B shall be the "Responsible Party") or (ii) an imbalance on Party B's transporter's system caused by Party A or Party A's transporter's receipt of more or less than the Gas Payment quantity (in which case Party A shall be the "Responsible Party"), the Responsible Party shall be liable for and

reimburse to the other Party any associated transporter cash out costs and losses or penalties incurred by such other Party. In the event the tariff of either Party A's or Party B's transporter provides for cash outs on the basis of the aggregation of all overdeliveries and underdeliveries between such transporter and Party A or Party B, respectively (the "Aggregate Transporter Imbalance"), and the nature of the imbalance (overdelivery or underdelivery) attributable to the Responsible Party is the same as the Aggregate Transporter Imbalance (overdelivery or underdelivery), the Responsible Party shall participate in the other Party's cashout settlement of the Aggregate Transporter Imbalance on the basis of only the Responsible Party's pro-rata share thereof.

12.6 Governmental Charges, Title, Risk of Loss and Indemnity. Party B shall pay all Governmental Charges applicable to the Gas Payment to the Gas Delivery Point. Party A shall pay all Governmental Charges applicable to the Gas Payment from the Gas Delivery Point. Title to the Gas Payment shall pass from Party B to Party A at the Gas Delivery Point. Party B warrants that title to the Gas Payment is free from all production burdens, liens and adverse claims and warrants its right to sell the same and agrees to, to the extent permitted by law, indemnify, defend and hold harmless Buyer against all Claims to or against the title of the Gas Payment arising prior to Party B's delivery of the Gas Payment to Party A at the Gas Delivery Point. As between the Parties, Party B shall be deemed to be in exclusive control and possession of the Gas Payment delivered hereunder, and responsible for any damage or injury caused thereby, prior to the time the same shall have been delivered to Party A. As between the Parties, each Party assumes, to the extent permitted by law, all liability for and shall indemnify, defend and hold harmless the other Party from any Claims, including death of persons, arising from any act or incident occurring when title to the Gas Payment is vested in the indemnifying party. IT IS THE INTENT OF THE PARTIES THAT, TO THE EXTENT PERMITTED BY LAW, THIS INDEMNITY BE WITHOUT REGARD TO THE CAUSES THEREOF, INCLUDING, WITHOUT LIMITATION, THE NEGLIGENCE OF ANY INDEMNIFIED PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE OR THE STRICT LIABILITY OF ANY INDEMNIFIED PARTY."

## **SCHEDULE M.**

**Schedule M.** Schedule M shall be amended as follows:

- (1) In Section A, "Act" will mean Sections 80000, 80002, 80002.5, 80003, 80004, 80010, 80012, 80016, 80100, 80102, 80104, 80106, 80108, 80110, 80112, 80114, 80116, 80120, 80122, 80130, 80132, 80134, 80200, 80250, 80260 and 80270 of the California Water Code and Sections 360.5 and 366.5 of the California Public Utilities Code.
- (2) "Special Fund" will mean the Fund.

(3) In Section A, the defined term “Governmental Entity or Public Power System” shall be replaced with the term “Governmental Entity” using the following definition “‘Governmental Entity’ means the State of California Department of Water Resources separate and apart from its powers and responsibilities with respect to the State Water Resources Development System”; and all references to (A) “Governmental Entity or Public Power System” (and cognates) and (B) “Public Power System” (and cognates) in Schedule M shall be replaced with the new defined term “Governmental Entity” (using the applicable cognate).

(4) In Section D, delete Section 3.5 and replace it with the following:

Section 3.5 No Immunity Claim. California law authorizes suits based on contract against the State or its agencies, and Party B agrees that it will not assert any immunity it may have as a state agency against such lawsuits filed in state court.

(5) In Section G, specify that the laws of the State of California will apply.

(6) Add a new Section H, which shall read as follows:

“Section 3.8. Payments Under Agreement an Operating Expense. Payments under this Agreement shall constitute an operating expense of the Fund payable prior to all bonds, notes or other indebtedness secured by a pledge or assignment of the Trust Estate or payments to the general fund.”

(7) Add a new Section I, which shall read as follows:

“Section 3.9. Rate Covenant; No Impairment. In accordance with Section 80134 of the Water Code, Party B covenants that it will, at least annually, and more frequently as required, establish and revise revenue requirements sufficient, together with any moneys on deposit in the Fund, to provide for the timely payment of all obligations which it has incurred, including any payments required to be made by Party B pursuant to this Agreement. As provided in Section 80200 of the Water Code, while any obligations of Party B pursuant to this Agreement remain outstanding and not fully performed or discharged, the rights, powers, duties and existence of Party B and the Public Utilities Commission shall not be diminished or impaired in any manner that will affect adversely the interests and rights of the Seller under this Agreement.”

“Section 3.9.1 No Exclusion of Reimbursement to General Fund from Rate Covenant Calculation. Party B covenants and agrees that any mandatory or discretionary reimbursement of the general fund of the State of California by Party B constitutes an obligation which Party B has incurred within the meaning of Section 3.9 of this Schedule M and which Party B must include in the calculation of revenue requirements in accordance with said Section 3.9.

(8) Add a new Section J, which shall read as follows:

“Section 3.10. No More Favorable Terms. Party B shall not provide in any power purchase agreement payable from the Trust Estate for (i) collateral or other security or credit support with respect thereto, (ii) a pledge or assignment of the Trust Estate for the payment thereof, or (iii) payment priority with respect thereto superior to that of Party A, without in each case offering such arrangements to Party A.”

(9) Add a new Section K, which shall read as follows:

“Section 3.11. Sources of Payment; No Debt of State. Party B's obligation to make payments hereunder shall be limited solely to the Fund. Any liability of Party B arising in connection with this Agreement or any claim based thereon or with respect thereto, including, but not limited to, any Termination Payment arising as the result of any breach or Event of Default under this Agreement, and any other payment obligation or liability of or judgment against Party B hereunder, shall be satisfied solely from the Fund. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF CALIFORNIA ARE OR MAY BE PLEDGED FOR ANY PAYMENT UNDER THIS AGREEMENT. Revenues and assets of the State Water Resources Development System shall not be liable for or available to make any payments or satisfy any obligation arising under this Agreement.”

(10) Add a new Section L, which shall read as follows:

“Section 3.12. Application of Government Code and the Public Contracts Code. Party A has stated that, because of the administrative burden and delays associated with such requirements, it would not enter into this Agreement if the provisions of the Government Code and the Public Contracts Code applicable to state contracts, including, but not limited to, advertising and competitive bidding requirements and prompt payment requirements would apply to or be required to be incorporated in this Agreement. Accordingly, pursuant to Section 80014(b) of the Water Code, Party B has determined that it would be detrimental to accomplishing the purposes of Division 27 (commencing with Section 80000) of the Water Code to make such provisions applicable to this Agreement and that such provisions and requirements are therefore not applicable to or incorporated in this Agreement.”

(11) Add a new Section M, which shall read as follows:

“Section 3.13. Covenant to Provide Notice. Party B shall provide Party A as soon as reasonably practicable but in no event later than thirty (30) days after Party B's agreement with any third party which would trigger Party B's obligations under Section 3.10 of this Schedule M.”

## **SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS**

Schedule P is hereby deleted in its entirety.

[THE NEXT PAGE IS THE SIGNATURE PAGE]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the date first above written.

**Party A Name**

Coral Power, L.L.C., a Delaware limited liability company

**Party B Name**

California Department of Water Resources, acting solely under the authority and powers created by AB1-X, codified as Sections 80000 through 80270 of the Water Code, as amended (the “Act”), and not under its powers and responsibilities with respect to the State Water Resources Development System

By:\_\_\_\_\_

Name: Deborah S. Wernet

Title: President

By:\_\_\_\_\_

Name:\_\_\_\_\_

Title:\_\_\_\_\_